Annual Report of the Saskatchewan Conflict of Interest Commissioner

2008

Saskatchewan
Conflict of Interest
Commissioner

Gerald L. Gerrand, Q.C.
[redacted]
[redacted]
[redacted]
Tel: [redacted]
Fax: [redacted]

August 21, 2009

The Honourable Don Toth,
Speaker of the Legislative Assembly
of Saskatchewan,
Room 129 Legislative Building,
Regina, Saskatchewan
S4S 0B3

Dear Mister Speaker:

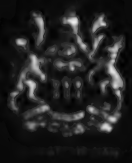
I have the pleasure and honour to present to you the Annual Report of the Office of the Conflict of Interest Commissioner for the period of January 1, 2008 to December 31, 2008.

This Report is submitted pursuant to Section 25 of *The Members' Conflict of Interest Act*, Chapter M-11.11, Statutes of Saskatchewan, 1993.

Yours respectfully,

G. L. GERRAND, Q.C.
Commissioner

Saskatchewan
Conflict of Interest
Commissioner



Gerald L. Gerrand, Q.C.
[redacted]

ANNUAL REPORT

To the Legislative Assembly
For the Year Ending December 31, 2008

This is the 8th Annual Report that I have filed with the Speaker of the Legislative Assembly as mandated by the relevant legislation. This Annual Report is intended to describe the progress and activities of myself as Commissioner for the year 2008.

Disclosure Process

Every democratic country in the Western World has adopted legislative guidelines to prevent private gain from public office. The legislative provisions of each jurisdiction respecting conflict of interest differ in detail but key requirements appear in some form in each jurisdiction. One of the key requirements that is common to all legislative provisions relates to disclosure by elected members of their financial and property affairs. Full and timely disclosure in this area by elected officials is a major foundation to conflict of interest legislative schemes.

The Members' Conflict of Interest Act ("the *Act*") of Saskatchewan requires each elected Member of the Legislative Assembly to prepare and file annually with me as Commissioner a Private Disclosure Statement in the form prescribed by the Regulations detailing the following information:

> "(a) a statement of the assets, liabilities and financial interests of the member, of the member's family and of any private companies that are controlled by all or any of them;
>
> (b) a statement of the income of the member, of the member's family and of any private companies that are controlled by all or any of them and the sources of that income;

(c) a statement of any directorships or offices held by the member or any of the member's family in the 12 months preceding the date of the statement;

(d) a statement of any business managed or operated by the member or any of the member's family in the 12 months preceding the date of the statement;

(e) a statement of any government contract, as defined in section 15, in which the member or any of the member's family is participating;

(f) any other information that is directed by the commissioner."

The completed Disclosure Statement must be filed with me within 90 days of the Member being elected, and in subsequent years, on or before March 31.

Two Members of the Legislative Assembly failed to file with me their completed Disclosure Statements within the time requirements of the year 2008. These Members were Buckley Belanger, Member for Athabasca, and Judy Junor, Member for Saskatoon Eastview. As required by Section 30(2) of the *Act*, I inquired into the non-compliance by these two Members of their filing obligations under the *Act* and duly reported their breach to the Speaker of the Legislative Assembly by letters dated March 24, 2008.

On March 31, 2008, the Legislative Assembly adopted a Resolution reprimanding the two Members as recommended by me in my report to the Speaker.

The two Members filed their Disclosure Statements with me shortly following March 31, 2008 and apologized to me for their delinquency.

I am obligated under the *Act* to prepare and file with the Clerk of the Legislative Assembly a Public Disclosure Statement respecting the financial and property affairs of each member. These Statements must be filed prior to June 30 of each year, following

my receipt of the Members' Private Disclosure Statements and my consultation with each Member regarding their Private Disclosure Statement and their obligations under the *Act*. These processes were completed prior to June 30 in 2008 and all Public Disclosure Statements of Members were filed with the Clerk of the Legislative Assembly prior to that date.

High standards of disclosure and ethical conduct are statutorily required of our Members of the Legislative Assembly. Aside from the aforementioned filing delinquency of two Members, these standards were observed by all Members in 2008.

Commissioner's Opinion and Advice

Section 27(1) of the *Act* provides that "a member ... may request that the commissioner give an opinion and recommendation on any matter respecting the obligations of the member under this Act." The section also provides that I may make such inquiries as I deem appropriate to provide a written opinion and recommendations and that the opinion and recommendations are viewed as confidential.

Many Members, in the course of the year 2008, sought my opinion and recommendations on a variety of matters related to acceptance or otherwise of gifts and benefits, business and financial options and observance of the provisions of the *Act*. It is clear to me that the Members that consult with me under Section 27 are aware that a high ethical standard is demanded of them in the performance of their duties as Members of the Legislative Assembly.

Request for an Opinion Pursuant to Section 32 of the *Act*

As remarked on in my Annual Report for 2007, I commenced an inquiry pursuant to Section 32 of the *Act* regarding "the conduct of Minister Glenn Hagel, any government Caucus Members, or Caucus employees, past or present, with respect to events

surrounding the financial irregularities arising from the employment of Mrs. Ann Lord in the Government Caucus office and the subsequent review of and response to those events by Minister Hagel, other Caucus Members or employees."

Following the conclusion of police investigations and the decision of the Department of the Attorney General in February of 2008 respecting the question of criminal charges, I recommenced my investigation into this matter.

In the course of my inquiry, I reviewed several hundreds of pages of police interviews and statements, subpoenaed documents from the office of the NDP Caucus, examined key role players under oath and interviewed other persons with knowledge of events.

My report was delivered to Premier Wall at the end of September, 2008 and was subsequently made public by him.

It was necessary to consider and opine upon the precise meaning of the word "conduct" as used in Section "32" of the *Act*, a provision which is unique to the Saskatchewan legislation. Having regard to the principles of interpretations and particularly the words spoken by Members of the Legislative Assembly in March of 1993 at the time of the introduction of the *Act*, I concluded that the word "conduct" as used in Section 32 of the *Act* relates to the obligations of Members under the Members' Code of Conduct adopted by the Assembly at the same time as the passing of *The Members' Conflict of Interest Act*.

Amongst other things, I concluded that Mr. Hagel misled the Assembly in 2007 on factual matters related to the Ann Lord affair, thereby breaching the Members' Code of Conduct requiring "fairness in political dealings" amongst Legislative colleagues and the maintaining of the highest ethical standards in the fulfilling of a Member's obligations.

In my report I made gratuitous observations of the manner in which the Opposition party made use of documents anonymously supplied to it respecting the Ann Lord affair which had unfolded 14 years previously.

Several documents were used for purposes of questioning Government Members over a period of several days and the total package of documents were not filed with the Clerk until answers had been provided by Mr. Hagel in daily question period.

I expressed the view that Mr. Hagel would have been in a better position to provide more accurate answers to questions had the entire package of documents been filed by the Opposition prior to posing of the questions and that there would have been compliance by the Opposition with the commitment to fairness outlined in the Code of Conduct of Members of the Legislative Assembly.

In the course of my Report, I distinguished between whose conduct I am authorized to review and whose conduct I may comment upon. Although asked to review the conduct of employees within the NDP Caucus, I concluded that I was authorized to comment only on the conduct of a Minister as referenced in Section 32. I also concluded I have no jurisdiction to comment on the actions of former Members where the actions took place before the coming into force of the *Act*.

The 48 page Report concluded with the following two paragraphs:

> "127. This sad little tale of theft would have been long forgotten if those that learned of it had dealt with the theft in an honest, straight forward and transparent manner. No one was to blame for the theft except Ann Lord. Regrettably, those that firstly learned of it chose to deceive and mislead others about the theft for misguided political objectives.

128. Common sense and honesty are required attributes of all elected representatives and their aides if the parliamentary system is to work properly. These requirements existed long before the adoption of any Code of Ethical Conduct. Had the principles of common sense and honesty been observed in the circumstances of the Ann Lord matter, it would have ended quietly and resources of society would not have been expended in investigating and examining it."

Request for Opinion Regarding the Conduct of Ministers Don Morgan and Ken Krawetz

By letter dated April 21, 2008, the Honourable Frank Quennell, NDP Caucus Chair, sought a formal opinion from me pursuant to Section 29(1) of the *Act*.

Ministers Morgan and Krawetz were alleged, along with other caucus members and employees, of making misleading statements about documents the caucus received that were illegally obtained from the Regina Police Service in 2006. Justice Minister Morgan had declined to name the person suspected to having illegally obtained the documents.

I responded to the request for an opinion by stating that I did not have jurisdiction to review the actions of any person other than Members of the Legislative; that the definition of "direct associate" did not apply in this situation; that the request for an opinion did not satisfy the requirements of a request as it did not set out specific actions taken to support a claim that private interests were being furthered; that there is no factual assertion as to the manner in which the public was misled, including what misstatements were made or who made them, or that the conduct was done in the execution of a Member's office; and that the Justice Minister made a decision in carrying out his executive function not to disclose the name of the person suspected of illegally obtaining documents.

In referring to the Minister of Justice's decision not to reveal the name of the suspect, I commented "There was been no decision by a Conflict of Interest or Ethics

Commissioner in Canada of which I am aware where the carrying out of an executive act has been considered to be a breach of the Member's obligations to avoid a conflict of interest absent clear evidence that the personal interest of the Minister was being advanced by reason of the decision."

EXEMPTIONS GRANTED BY THE COMMISSIONER UNDER SECTION 34 OF THE *ACT*

No exemptions were granted to any former Member pursuant to the provisions of Section 34 of the *Act* in 2008.

BUDGET AND EXPENDITURE OF THE OFFICE OF THE COMMISSIONER

The budget for the Office of the Commissioner for the year 2008 was $151,000.00. The sum of $144,701.00 was actually expended in the operation of the office.

EXPRESSION OF APPRECIATION

I have been assisted in the carrying out of my duties throughout the calendar year 2008 by Members of the staff of the Speaker's and Clerk's office as well as Orla Cuddington and I thank all for the support they have given me.

DATED at Regina, Saskatchewan, this 21st day of August, 2009.

G.L. Gerrand, Q.C.
Conflict of Interest Commissioner
for Saskatchewan